

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

**DONALD ROGER LAYNE,**

**Petitioner,**

**v.**

**CIVIL ACTION NO. 2:07cv73**  
(Judge Maxwell)

**COMMISSIONER A.V. DODRILL, Jr.,**

**Respondent.**

**REPORT AND RECOMMENDATION**

**I. BACKGROUND**

On September 20, 2007, Roger Layne, filed a *pro se* Civil Rights Complaint pursuant to 42 U.S.C. § 1983. On October 17, 2007, he filed a Motion To Withdraw Without Prejudice. The undersigned has construed this to be a Motion to Dismiss.

**II. ANALYSIS**

Rule 41 of the Federal Rules of Civil Procedure provides for dismissal of actions. More particularly, Rule 41(a) provides for voluntary dismissal. Pursuant to Rules 41(a)(1), an action can be dismissed by the plaintiff without order of court upon filing of a notice of dismissal at any time before service by an adverse party of an answer or of a motion for summary judgment, whichever first occurs. Because this matter has not been screened, the defendant has not been directed to answer, and there is no answer or motion for summary judgment. Accordingly, this matter may be dismissed without order of the court.

**III. RECOMMENDATION**

In consideration of the foregoing, it is the undersigned's recommendation that the Clerk be directed to close this case and dismiss it from the active docket of the Court.

Any party may file within ten (10) days after being served with a copy of this Recommendation with the Clerk of the Court written objections identifying the portions of the Recommendation to which objections are made, and the basis for such objections. A copy of such objections should also be submitted to the Honorable Robert E. Maxwell, United States District Judge. Failure to timely file objections to the Recommendation set forth above will result in waiver of the right to appeal from a judgment of this Court based upon such Recommendation. 28 U.S.C. § 636(b)(1); Thomas v. Arn, 474 U.S. 140 (1985); Wright v. Collins, 766 F.2d 841 (4th Cir. 1985); United States v. Schronce, 727 F.2d 91 (4th Cir. 1984), cert. denied, 467 U.S. 1208 (1984).

The Clerk of Court is directed to mail a copy of this Recommendation to the *pro se* plaintiff by certified mail, return receipt requested.

Dated: October 18, 2007.

/s/ James E. Seibert  
JAMES E. SEIBERT  
UNITED STATES MAGISTRATE JUDGE